MODEN HARTAWAN SDN BHD v. PENTADBIR TANAH JOHOR BAHRU

HIGH COURT MALAYA, JOHOR BAHRU
GUNALAN MUNIANDY JC
[ORIGINATING SUMMONS NO: 24NCVC-405-07-2014]
26 NOVEMBER 2014

LAND LAW: *Caveat – Registrar's caveat – Application to remove or cancel – National Land Code, s. 418 – Plaintiff purchased land from vendor with indefeasible registered title to land – Whether plaintiff a bona fide purchaser and became sole equitable and beneficial owner – Conclusiveness of register document of title under s. 89 of NLC – Registrar issued certification of title showing ownership of land in name of vendor – Whether registrar estopped from denying certification to detriment of plaintiff - Whether plaintiff an aggrieved party by existence of caveat – Whether registrar wrongly entered caveat under s. 320 NLC – Whether there was contravention of s. 304(2)(a) and s. 305(2) NLC*

The plaintiff had purchased a piece of land ('the subject land') from its registered proprietor, Wan Heng Sdn Bhd ('WH') free from any encumbrances for valuable consideration. The land search together with the defendant's certification of title showed that the vendor, WH, was the registered proprietor at all material times and the plaintiff was a *bona fide* purchaser for value without notice of any alleged fraud or mistake in the transfer of ownership of the subject land to WH. The plaintiff became the sole equitable and beneficial owner of the subject land while WH became the bare trustee. However, a caveat was entered on the subject land by the registrar/land administrator ('LA'). Thus the plaintiff, in its capacity and sufficient interest, prayed for the registrar's caveat to be cancelled forthwith pursuant to s. 418 of the National Land Code ('NLC'). The issue that arose was whether the registrar's caveat was wrongly entered under s. 320 NLC.

Held (allowing removal or cancellation of registrar's caveat):

(1) The document of title exhibited by the defendant showed the registered proprietor to be WH which was duly signed and sealed by the LA. The second presentation bearing the same number for transfer to one 'Wan Neng' showed only the seal but without the authentication by the LA which was in contravention of ss. 304(2)(a) and 305(2) NLC. It could thus be safely disregarded by the court. (para 5)

(2) Under the Torrens system of land administration practised in Malaysia and legislated *via* the NLC, the register is everything and absolute with regard to title and ownership, save for some exceptions recognised under the NLC. WH had an indefeasible registered title to the subject land and was capable of passing a good title to the subject land to the plaintiff who, as a *bona fide* purchaser for value, had become the equitable and beneficial owner. WH had lawfully acquired ownership through a duly

registered presentation of transfer from the previous registered proprietor. The transfer was, thus, regular and valid under the relevant provisions of the NLC. (para 6)

(3) The registrar, after having issued the certification of title which showed that the ownership of the subject property was wholly in the name of WH, was now estopped from denying the certification to the detriment of the plaintiff who relied on the document of title duly certified to purchase and obtain ownership of the property lawfully. (para 7)

(4) The defendant did not have valid grounds that were good in law to enter the registrar's caveat on the land particularly in view of the conclusiveness of the register document of title under s. 89 NLC. The plaintiff was clearly an aggrieved party by the entry and existence of the caveat and thus qualified to apply for its removal or cancellation under s. 418 NLC. Therefore, the registrar had wrongly entered the caveat and erroneously refused to register the duly executed transfer documents of title by the then registered proprietor to the plaintiff. (para 8)

Legislation referred to:
National Land Code, ss. 89, 304(2)(a), 305(2), 320, 418

For the plaintiff - Wong Kim Fatt (Wong Boon Chong & Chua Yee Leng with him); M/s Gulam & Wong
For the defendant - Farra Nor Azura Jumuddin, FC

Reported by Suhainah Wahiduddin

JUDGMENT

Gunalan Muniandy JC:

[1] The plaintiff ('P') prays for the registrar's caveat to be cancelled forthwith pursuant to s. 418, NLC. The caveat was entered on the subject land (Lot 4445, Geran Mukim 1973, Mukim of Pulai, District of Johor Bahru) by the Registrar/Land Administrator ('LA').

[2] Plaintiff purchased the subject land from its registered proprietor, Wan Heng Sdn Bhd ('WH') free from any encumbrances for valuable consideration. The land search together with the defendant's certification of title showed that the vendor ('WH') was the registered proprietor at all material times and P was a *bona fide* purchaser for value without notice of any alleged fraud or mistake in the transfer of ownership of the subject land to WH. P relied on the certification by the defendant before entering into the sale and purchase agreement ('SPA') to purchase the subject land.

[3] Having paid the full purchase price of the land to the vendor, who then executed the Form 14A and handed over possession of the issue document of title ('IDT') and the land to P, P became the sole equitable and beneficial owner of the subject land while WH became the bare trustees for P with no

further interest in or claim to title to the land. Hence, P had sufficient interest and capacity to make the application for cancellation of the Registrar's caveat that prohibited registration of title of the said land in P's name.

[4] The question is whether the Registrar's caveat was wrongly entered under s. 320, NLC?

[5] The document of title exhibited by the defendant himself shows the registered proprietor to be the above vendor since 17 August 1993 *vide* Presentation No. 601/93 which was duly signed and sealed by the LA on that day. The second presentation bearing the same number for transfer to one 'Wan Neng' shows only the seal but without the authentication by the LA which is in contravention of ss. 304 and 305 of the NLC. The presentation is invalid and a nullity for failure to adhere to mandatory statutory requirements under ss. 304(2)(a) and 305(2), NLC. It can, thus, be safely disregarded by the court for the purposes of this case.

[6] Under the Torrens system of land administration practised in Malaysia and legislated *via* the NLC, the register is everything and absolute with regard to title and ownership save for some exceptions recognised under the NLC which do not apply to the present case. The vendor (WH) had an indefeasible registered title to the subject land and was capable of passing a good title to the subject land to P at the material time who as a *bona fide* purchaser for value had become the equitable and beneficial owner. WH had lawfully acquired ownership through a duly registered presentation of transfer from the previous registered proprietor. The transfer was, thus, regular and valid under the relevant provisions of the NLC.

[7] The Registrar, after having issued the certification of title on 4 July 2013 which showed that the ownership of the subject property was wholly in the name of WH, is now estopped from denying the certification to the detriment of the plaintiff who relied on the document of title duly certified to purchase and obtain ownership of the property lawfully.

[8] For the above reasons, I held that the defendant did not have valid grounds that were good in law to enter the Registrar's caveat on the land particularly in view of the conclusiveness of the register document of title ('RDT') under s. 89, NLC. The plaintiff was clearly an aggrieved party by the entry and existence of the caveat and thus, qualified to apply for its removal or cancellation under s. 418, NLC. I, therefore, held that the Registrar had wrongly entered the caveat and erroneously refused to register the duly executed transfer documents of title by the then registered proprietor to the plaintiff when presented.